

Application No. 10/795,830
Amendment dated April 1, 2008
Reply to Office Action dated October 5, 2007

Amendments to the Drawings:

Responsive to the Examiner's objection, Figure 1 has been amended to include the reference numerals 29 and 31.

The attached sheet of drawings includes the changes to Figure 1 and replaces the sheet filed March 6, 2004.

Attachments:

Replacement Sheet
Annotated Sheet Showing Changes

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REMARKS

Claims 2-4, 8-19, 21-23, 25 and 26 are pending in the Application.

Drawings

Applicants have amended Figure 1 to obviate the Examiner's objection to the drawings. Support for the amendments to Figure 1 can be found, e.g., in the claims as originally filed and in paragraph 22 which has been amended to include the reference numerals 29 and 31 which are added to Figure 1 by the current amendment.

Claim Rejections – 35 U.S.C. § 102

The Examiner rejected Claims 2-4, 8-10, 15-19, 21, 23, and 25 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0039396 to Couture et al. (hereinafter "Couture et al. '396").

Responsive to the foregoing rejection, Applicants submit herewith the attached Déclaration of the Inventors James E. Grimm and Shawn E. McGinley under 37 CFR § 1.131 ("the Declaration"). The Declaration establishes that the inventors conceived and reduced to practice in the United States the surgical system called for in Claims 2-4, 8-10, 15-19, 21-23, 25 and 26 before the earliest effective filing date of Couture et al. '396.

In view of the foregoing, Applicants respectfully submit that Couture et al. '396 is not a proper prior art reference under 35 U.S.C. § 102(e), and Applicants respectfully request withdrawal of the 35 U.S.C. § 102(e) of Claims 2, 3, 8-10, 15-19, 21, 23 and 25 as being anticipated by Couture et al. '396.

Allowable Subject Matter

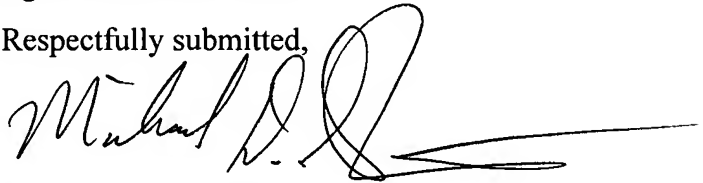
Applicants appreciate the indication of allowable subject matter in Claims 11-14.

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In the event Applicants have overlooked the need for an extension of time or payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels LLP.

Should the Examiner have any questions regarding any of the above, the Examiner is respectfully requested to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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CERTIFICATE UNDER 37 C.F.R. 1.8(B)

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the United States Patent and Trademark Office to the attention of: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on April 1, 2008.

Michael D. Schwartz, Reg. No. 44,326

Name of Registered Representative



Signature

April 1, 2008

Date

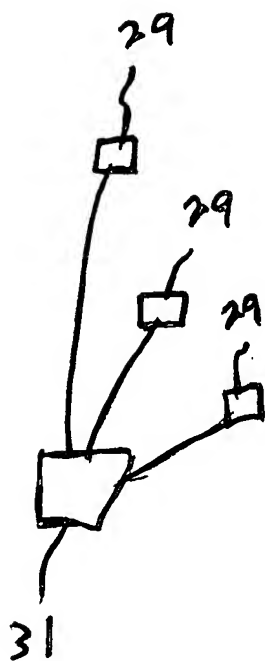


Fig. 1

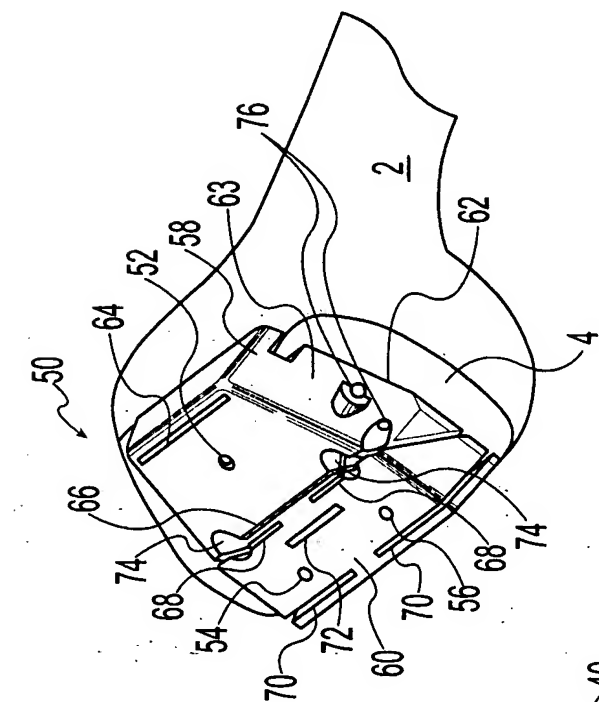


Fig. 2

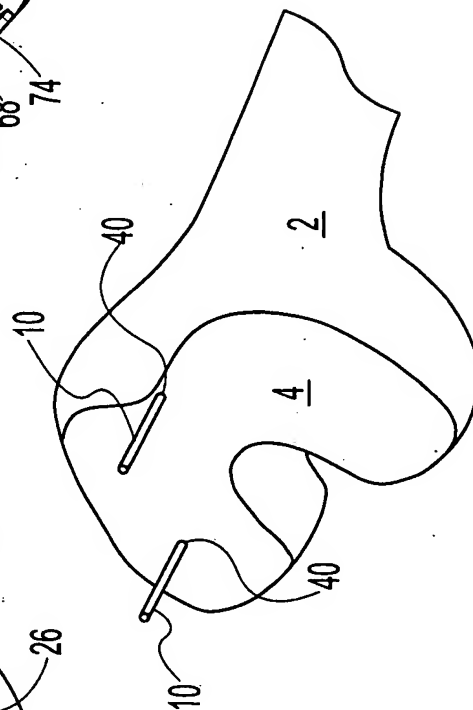


Fig. 3